

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION

MARYLAND SHALL ISSUE, INC., et al.,  
Plaintiffs,  
v.  
MONTGOMERY COUNTY, MARYLAND,  
Defendant.

Case No. 8:21-cv-01736-TDC

Greenbelt, Maryland  
February 6, 2023  
2:59 p.m.

MOTIONS HEARING  
BEFORE THE HONORABLE THEODORE D. CHUANG

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1 to places of worship, for example, the County would suggest that  
2 the Court, under Bruen, would need to look to the statutory  
3 analogues identified by the County that prohibited firearms in  
4 places of worship. And the County did identify a number of  
5 states that had laws prohibiting firearms at places of worship  
6 on the books in excess of a decade. A couple of those statutes  
7 were considered by the Supreme Courts of the day and approved,  
8 expressly approved by those courts.

9 THE COURT: Which ones are those?

10 MS. ASHBARRY: Your Honor, I believe that that is the  
11 Georgia and Texas Supreme Court cases, which I believe are Hill  
12 and English.

13 THE COURT: Okay. So am I correct, from the way you  
14 describe this, you want me to make the analogy that a childcare  
15 facility is a sensitive place. Are you asking me to do that for  
16 any other of the listed places of public assembly, or are you  
17 leaning only on the historical record for all of those?  
18 Understanding that, I think to some degree, the sensitive place  
19 determination does require a look at history as well.

20 MS. ASHBARRY: Correct, Your Honor. The County would  
21 point to childcare facilities as well as private schools, to the  
22 extent that those are challenged by plaintiffs here. The  
23 County's argument there is that the Bruen Court did not say only  
24 public schools in its ruling, never did. Neither it Heller,  
25 which also referred to schools as a sensitive location.



1 THE COURT: Would you agree, though, that that doesn't  
2 necessarily cover colleges and universities?

3 MS. ASHBARRY: Your Honor, the County's law, before  
4 its recent amendments, was limited to I believe primary and  
5 secondary schools -- is that correct -- but as revised by 21-22,  
6 it's schools. And so the County would argue that it's a broad  
7 interpretation of that term, and it would encompass universities  
8 and colleges, to the extent there are any in Montgomery County.

9 THE COURT: Well, we have Montgomery College, to start  
10 with.

11 MS. ASHBARRY: Yes, yes.

12 THE COURT: But you're saying that -- the statute  
13 covers that, but does -- are you saying that colleges and  
14 universities are sensitive places, under the Bruen construct?

15 MS. ASHBARRY: Yes.

16 THE COURT: So what is the analogy that you're  
17 drawing, then, because when I think of -- is it that these are  
18 places of educational teaching, or is it that this is a place  
19 where children are frequently found in large numbers? What is  
20 the thing that makes it sensitive, and what's the basis for that  
21 position?

22 MS. ASHBARRY: I would say both of those. In other  
23 words, not only has the County -- well, schools today, with  
24 respect to childcare facilities for children who are younger  
25 than kindergarten age frequently combine both preschool and



1 childcare, Your Honor. And so to the extent -- ultimately, a  
2 school for those individuals, for that group, they're minors,  
3 they're away from the protection of their parents, and therefore  
4 are -- and that's very similar to a school, historically,  
5 Your Honor.

6 And with respect to institutions of higher education,  
7 the County would argue that falls under the definition of a  
8 school in Bruen. And also, we would point to there are numerous  
9 historical statutes that ban weapons at places of -- for  
10 education or literary purposes.

11 THE COURT: No, I understand that argument. I'm just  
12 trying to understand, what is your definition of sensitive  
13 places and which parts of the statute fit within that, and I  
14 think you're trying to argue colleges and universities fit  
15 within that because they're analogous to schools.

16 MS. ASHBARRY: Yes.

17 THE COURT: And I'm just trying to understand --  
18 honestly, I don't know if there is any source you can tell me  
19 that helps define sensitive places better than just the case  
20 itself and that one word, "schools," but you're saying it's  
21 anyplace there's a lot of children, anyplace involving learning.

22 MS. ASHBARRY: Yes.

23 THE COURT: Not "and" but "or," one or the other.

24 MS. ASHBARRY: Yes.

25 THE COURT: And the basis for that is just your own



1 analysis; there's no further elucidation of the term "schools"  
2 in this case other than the word itself.

3 MS. ASHBARRY: Correct, Your Honor.

4 THE COURT: Or is there? Because I haven't found  
5 anything easy to focus on, but --

6 MS. ASHBARRY: That's correct, Your Honor, and  
7 furthermore, you know, the statute authorizing the County --  
8 again, the state statute authorizing the County -- authorizes  
9 the County to ban weapons at schools. It's a very broad term in  
10 the state statute as well.

11 THE COURT: Is schools defined anywhere? Again, I  
12 don't know what the Bruen Court meant by that, and I'm not going  
13 to say they were necessarily thinking about either a federal  
14 statute or something else, but I'm not sure it's the most  
15 natural reading of the term to say that it includes colleges and  
16 universities. I think your argument that it would include  
17 private schools is probably stronger between those two. But is  
18 there some sort of textual or definition-based argument you can  
19 make that colleges and universities are covered by schools?

20 MS. ASHBARRY: Not within Bruen, Your Honor, no, but  
21 with respect to the spirit of the other historical analogues  
22 that have been presented to the Court in our filing, that  
23 locations for educational or literary purposes are historically  
24 locations where firearms were banned or prohibited.

25 THE COURT: Okay. So any other categories you're



1 saying you have an argument on how it's a sensitive place, as  
2 opposed to just something I should just look at the history of?

3 MS. ASHBARRY: Well, you know -- yes, Your Honor.  
4 Essentially, for -- we're very clear in our papers which  
5 provisions of the law we view as falling under the exist- -- the  
6 existing five areas identified in Bruen. Private school --  
7 buffer zones in private schools, we make our arguments and  
8 provide analogues to the Court. And similar with respect to  
9 places of worship. And I don't -- all of the -- in other words,  
10 all of the areas in the County's defin- -- definition of public  
11 assembly are either analogous to these five sensitive locations  
12 in Bruen or have an historical tradition to support a finding  
13 that the County may constitute --

14 THE COURT: I'm just trying to understand. I thought  
15 just a moment ago you said places of worship was not a sensitive  
16 place, and now I just heard you say it was, so which one is it?

17 MS. ASHBARRY: Yes. Yes, it is, Your Honor, it is, it  
18 is. My apologies; I did not mean to confuse the Court. It is a  
19 sensitive location where the County could -- may  
20 constitutionally ban firearms.

21 THE COURT: And what's the reasoning behind that  
22 theory? It's analogous to which of the five, or how do you get  
23 it into that category?

24 MS. ASHBARRY: That -- the County does not argue it's  
25 analogous to one of the Bruen five. Instead, the County argues